

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.332 OF 2005

Anusayabai w/o. Vinayak Shahane,
 Age 50 years, Occu. Household,
 Resident of Paralkar, Washim,
 Shukarwarpeth, Washim, Taluka
 and District Washim

.. Applicant
 (Original complainant)

Versus

1. Ashok Devidas Dahiwal,
 Age 32 years, Occu. Business,
 Reside of Parali Vajinath,
 District Beed
2. Devidas Govind Dahiwal,
 Age 62 years, R/o. As above .. (Abated)
3. Sandip Devidas Dahiwal,
 Age 25 years, Occu. and
 R/o. As above
4. Sushilabai w/o. Devidas Dahiwal,
 Age 55 years, Occu. Household,
 R/o. As above
5. Soni alias Snehlata w/o. Sandip Dahiwal,
 Age 25 years, Occu. and R/o. As above
6. Vijaya alias Jaishree w/o. Balasaheb
 Patharkar, Age 42 years,
 Occu. Household, R/o. As above
7. Kishor Devidas Dahiwal,
 Age 21 years, Occu. Business,
 R/o. As above
8. Balasaheb Narayan Patharkar,
 Age 43 years, Occu. Service,
 R/o. Vasmatt, District Parbhani .. Respondents
 (Original Accused
 Nos.1 to 8)
9. The State of Maharashtra
 Through Police Sub Inspector,
 Parli Vajinath, District Beed .. Respondents

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Mr. Rohit P. Patwardhan, Advocate holding for Mr. D. R. Shelke, Advocate for Applicant;

Mr. P. P. Patni, Advocate holding for Mr. P. F. Patni, Advocate for Respondents No. 1, 3, 4, 5 and 7;

Mr. K. S. Patil, A.P.P. for Respondent No.9/State

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CORAM : S. G. MEHARE, J.

DATE : 08-06-2023

ORAL JUDGMENT :-

1. Heard the learned counsel for the applicant, the learned counsel for respondents Nos. 1, 3, 4, 5 and 7 and the learned A.P.P. for respondent No.9/State.

2. Present applicant, who is the mother of the deceased, has preferred revision under Section 397 read with Section 401 of the Code of Criminal Procedure against the order of acquittal passed by the learned 2nd Ad-hoc Assistant Sessions Judge, Ambajogai, District Beed, in Sessions Case No. 26 of 2002, dated 26.04.2005.

3. The learned counsel for the applicant would submit that the circumstances of the case have not been properly appreciated. The deceased/wife died within seven years of marriage. Therefore, presumption under Section 113(B) of the Indian Evidence Act would have been attracted. The accused had no explanation for the death of the victim within seven years of her marriage. The deceased was ill-treated for the demand of dowry. The material evidence has not been considered by the learned Ad-hoc Assistant Sessions Judge. Hence, the revision application is liable to be allowed.

4. Per contra, Mr. Patni, learned counsel for respondents Nos. 1, 3, 4, 5 and 7/accused, has vehemently argued that the learned Adhoc Assistant Sessions Judge has correctly appreciated the evidence. The deceased was suffering from an ulcer and had undergone surgery. The postmortem report supports the contentions of the applicant that the death of the deceased was natural. The witnesses have also given the material admission that the relations between husband and wife were cordial and harmonious. There was absolutely no ill-treatment to the deceased for the fulfilment of the dowry. There is no apparent error on the face of the record. Hence, the revision is liable to be dismissed.

5. To bring home the guilt under Section 498(A) and 304(B) of the Indian Penal Code or in alternate under Section 306 of the Indian Penal Code, the prosecution has to prove the ill-treatment to the wife by the husband or his relative for the demand of dowry and the said ill-treatment was caused to the deceased soon before the incident. The accused shall abate the deceased to commit suicide. The death of the wife should be unnatural.

6. Perused the papers.

7. There is absolutely nothing on record to point out that the deceased was ill-treated at any time at the hands of the accused/respondents for dowry. After the death, the postmortem on the person of the deceased was performed. P.W.No.4 Doctor,

who had performed the postmortem on the person of the deceased, had deposed that the deceased was suffering from an ulcer and had undergone surgery. His candid opinion supports the observations recorded in the postmortem report that the deceased died due to bacterial infection and septicemia. Therefore, the cause of her death due to the cardiorespiratory arrest. In the absence of any cogent and reliable evidence to believe that the deceased was ill-treated and died due to ill-treatment, it would be difficult to believe that the prosecution has proved the case beyond a reasonable doubt.

8. The judgment and the record reveal that the learned Ad-hoc Assistant Sessions Judge, Ambajogai has correctly appreciated the evidence and also applied the correct provision of law. There is no apparent error on the face of the record that warrants the interference with the impugned judgment and order. The revision application is devoid of merit. Hence, the following order:-

ORDER

- i) The revision application is dismissed.
- ii) R & P be returned to the Court of learned Adhoc Assistant Sessions Judge, Ambajogai, District Beed.
- iii) Rule stands discharged.

**(S. G. MEHARE)
JUDGE**